ABDUL SALAM v. LEE AH SONG AND ANOR.

[App. Civ. Juris. (Taylor, J.) July 20, 1951]

[F.M. — Civil Appeal No. 19 of 1951]

Appeal — Extension of time to file the record of an appeal to the Court of Appeal — Whether single judge has jurisdiction to grant such an extension — Courts Ordinance, 1948, s. 18.

A single Judge of the Court of Appeal has jurisdiction to extend the time for filing the record of an appeal.

Case referred to:—

(1) *Muthucumaru v. Alkaff* (1933) M.L.J. 27.

MOTION for extension of time to file the record of appeal.

F. G. Pooley for the appellant.

Lim Cheng Ean for the respondents.

Cur. Adv. Vult.

Taylor, J. : — This was a motion for extension of time to file the record of an appeal to the Court of Appeal.

The time for filing notice of appeal expired on 20th April and the notice was actually lodged in the registry at Alor Star on 19th April. The time for filing the record therefore expired on 10th May. Meantime the registry had stated, in a letter to the appellant's solicitors, that the appeal was entered on 24th April calculating the time from that erroneous date, the solicitors lodged the record on 14th May and it was afterwards returned to them on instructions from the Central Registry at Kuala Lumpur as having been lodged out of time, without leave. The appellant then applied for the necessary extension of time to file the record.

As the next session of the Court of Appeal is still some weeks ahead there could be no real inconvenience either to the respondents or to the Court and there was no opposition. On the merits, therefore, the motion should succeed.

The substantial question argued is whether a single Judge of the Court of Appeal has jurisdiction to grant such an extension. It was said that there is no authority on this point. It is clear that he cannot grant extension of time to give notice of appeal, *Muthucumaru v. Alkaff*[1] but that is an entirely different question. That decision turned largely on the distinction between what is and what is not a pending matter — a point which does not arise here — but the report strongly suggests that at that date a single judge had jurisdiction to deal with such an application as this.

The present powers are given by section 18 of the Courts Ordinance, 1948. At first sight this provision seems to distinguish between a direction and an order, but after comparing the English Rules and the former local Rules I am satisfied that in this section "direction" is used in a sense similar to "summons for directions", where the directions given are always embodied in a formal order; for the purpose in hand, therefore, I do not think that there is any distinction.

I therefore hold that a single Judge of the Court of Appeal (sitting as such, not in the High Court) has jurisdiction on a motion filed and intituled in a pending appeal to extend the time to lodge the record.

On the question of costs, there is no hard and fast rule. The principle is that where a party seeks an indulgence he must ordinarily be prepared to pay the costs in any event, but where a mistake originated in the Court it may be regarded as a peril of the litigation and the costs may be in the cause. I thought that this case fell under the latter principle.

Order accordingly.

S.K.T. KULANTHAYAN CHETTIAR v. KOH LIAK PHUANG.

[Orig. Civ. Juris. (Paul Storr, J.) July 22, 1951]

[Muar — Originating Motion No. 77 of 1950]

Civil Procedure Rules (Johore), O. 10 r. 4(i) — "To the best of my knowledge" — Interpretation of — No cause of action.

At the hearing of this Originating Motion, Mr. Sault, who appeared for the respondent, raised two preliminary points: (1) that the affidavit of Ramaswami Pillai ((2) in file) in support of the Motion did not of itself disclose a cause of action in that he only deposed "to the best of my knowledge" as to there being no demand from the occupation agent and not within his knowledge and therefore the affidavit did not comply with O. 10 r. 4(i), Civil Procedure Rules, Johore, as this was a final matter and not an interlocutory one, and (2) that the affidavit filed of M. Balasibramaniam Pillai ((12) in file) should not be read for two reasons (a) that it was not sworn in conformity with O. 10 r. 6(ii) which, as India did not now come within O. 10 r. 6(i), it should have been, and (b) that the jurat did not conform with O. 10 r. 12(i) and therefore O. 10 r. 13 applied.

Held, that the words "to the best of my knowledge" when referred to the acts of another person must mean "to the best of my knowledge, information and belief" and that what is deposed to is not within the knowledge of the deponent and therefore, without such statement as is contained in para. 6 of the affidavit of Ramaswami Pillai ((2) in the file), the Motion shows no cause of action and must be dismissed.

ORIGINATING MOTION.

S. C. MacIntyre for the applicant.

W. H. Sault for the respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Paul Storr, J. : — At the hearing of this Originating Motion, Mr. Sault, who appeared for the respondent, raised two preliminary points: (1) that the affidavit of Ramaswami Pillai ((2) in file) in support of the Motion did not of itself disclose a cause of action in that he only deposed "to the best of my knowledge" as to there being no demand from the occupation agent and not within his knowledge and therefore the affidavit did not comply with O. 10 r. 4(i), Civil Procedure Rules, Johore, as this was a final matter and not an interlocutory one, and (2) that the affidavit filed of M. Balasubramanian Pillai ((12) in file) should not be read for 2 reasons (a) that it was not sworn in conformity with O. 10 r. 6(ii) which, as India did not now come within O. 10 r. 6(i), it should have been, and (b) that the jurat did not conform with O. 10 r. 12(i) and therefore O. 10 r. 13 applied.

Mr. MacIntyre appeared for the applicant and in answer to Mr. Sault's first objection stated that the words "to the best of my knowledge" were not "to the best of my knowledge, information and belief" and therefore were tantamount to saying "within my knowledge". As to the second objection he submitted that the affidavit was not filed in support of the Motion, and as to the jurat he was unable to say how the status of India at the present time fitted in with the Orders and Rules.

It was agreed by both Counsel that when giving my judgment I should consider such affidavits as I hold to be rightly before the Court and decide the case accordingly. Further it was agreed that the correct figure mentioned in the Motion should be $3,783 and not $5,009.65.

For convenience I will take the second point raised by Mr. Sault first, i.e. as to whether the jurat of the affidavit of M. Balasubramanian Pillai complied with the Civil Procedure Rules applicable to the State of Johore. I hold that :—

(1) O. 10 r. 12 has not been complied with and therefore, under O. 10 r. 13, the affidavit cannot be used in evidence;

(2) O. 10 r. 10 has not been complied with, as no place is stated as to where the affidavit was sworn; and

(3) The wording of O. 10 r. 6(i) and (ii) does not cover the present status of India.

Under O. 10 r. 18 the Court is given a wide discretion in the matter of receiving affidavits which do not conform strictly with the Rules, but in view of the defects in the affidavit under consideration I am not prepared to exercise my discretion and allow it to be used in evidence even if, which I doubt, r. 18 overrides the mandatory provisions of r. 13.

As to the first point raised by Mr. Sault, I have come to the conclusion that the words "to the best of my knowledge" when referred to the acts of another person must mean "to the best of my knowledge, information and belief" and that what is deposed to is not within the knowledge of the deponent and therefore, without such statement as is contained in para 6 of the affidavit of Ramaswami Pillai ((2) in the file), the Motion shows no cause of action and must be dismissed.

However, if my interpretation of the words "to the best of my knowledge" is wrong, then on the affidavits before me, i.e. the affidavits of Ramaswami Pillai ((2) in the file), the respondent, and Tee Pau ((9) and (10) in the file), I have come to the conclusion that the probabilities and weight of evidence are in favour of the respondent and that, therefore, on that ground alone I would dismiss the Motion.

The Motion is dismissed with costs.

Motion dismissed.

SIM AH SONG & ANOR. v. REX.

[App. Crim. Juris. (Brown, Ag. C.J.) July 25, 1951]

[Singapore — Magistrate's Appeal No. 60 of 1951]

Common Gaming Houses Ordinance (Cap. 30) s. 9 — Public Lottery — Chap Ji Ki lottery — Presumption — Expert evidence.

In this case the appellants were convicted under Section 4(c) of the Common Gaming House Ordinance of assisting in carrying on a public lottery. The evidence was that in the course of a Police raid a third accused person was arrested with 50 slips of paper in her hand. These had writing on them, and were put in evidence. She was arrested on a staircase leading to the first floor. And in a room on the first floor the two appellants were found seated at a table with pencils in their hands. On the table in front of them were four pieces of paper. Each document was divided into 144 squares, and in each square several numbers were written in pencil. A fifth piece of paper was also on the table. It too was divided into squares containing Chinese characters and symbols.

The question was whether any of the abovesaid documents included "account, memorandum or record of stakes or wagers in or relating to a lottery", so as to raise the presumption contained in section 9 of the